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ELI LILLY AND COMPANY

By _____

Date _____

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Applicant : Bonjouklian et al. (Group Art Unit: 1625
Serial No. : 10/597,359 (
Filing Date : January 21, 2005 (Examiner: C. Chang
(
PCT Nat'l Entry (Date : July 21, 2006 (
For : KINASE INHIBITORS (
Docket No. : X16603 (Conf. No. 9860

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
INDICATED IN NOTICE OF ALLOWANCE
(37 C.F.R. § 1.705)

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants submit herewith this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. §1.705 in the above-referenced allowed application accompanied by the requisite fee under 37 C.F.R. § 1.18. Applicants believe that no additional fees are due with the filing of this Request. However, if any fees are required, Applicants hereby authorize the Commissioner to charge such fee, or credit any overpayment in fees, to Deposit Account No. 05-0840.

Applicants received the Notice of Allowance and Fees Due from the U.S. Patent and Trademark Office, mailed on February 1, 2010, which stated that the Patent Term Adjustment under 35 U.S.C. §154(b) to date is 0 days. By this paper, Applicants hereby petition the U.S. Patent and Trademark Office for reconsideration

of the patent term adjustment calculation to 783 days based on the facts provided herein. This request is submitted in view of the decision by the U.S. District Court decision in Wyeth v. Dudas (D.D.C. 2008) on September 30, 2008.

The facts supporting this filing are as follows:

The correct period of adjustment of patent term due to examination delay, at the time of the transmittal of the Notice of Allowance, under 37 C.F.R. §1.702(a), the period as specified in 37 C.F.R. §1.702 (a)-(e), less the reduction period of adjustment as specified in 37 C.F.R. §1.704, is calculated as follows from the Patent Term

Adjustment History of record in PAIR for the instant application:

37 C.F.R. §§ 1.703(a) – (e):	<u>783</u> days (USPTO delay)
37 C.F.R. § 1.704:	<u>0</u> days (Applicant delay)
Total 1.702(a):	<u>783</u> days

According to the provisions of 37 C.F.R. § 1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years after the date on which the application was filed. Applicants are entitled to this adjustment because none of the provisions described in 37 C.F.R. § 1.702(b)(1)-(5) apply to the instant application. The amount of Adjustment will depend on the date that the instant application is issued as a patent and should be counted from August 3, 2006, subtracting only time legitimately attributable to applicant delay after the period for reply to the Issue Fee Notification sent concurrently with the Notice of Allowance mailed on February 1, 2010. Therefore, the number of additional days under 37 C.F.R. § 1.702(b) should sum to a total of 783 days of PTA and is calculated as follows:

37 C.F.R. §1.702(a) through (e) is the sum of the following periods:

37 C.F.R. §1.702(a)	<u>601</u> days
37 C.F.R. §1.702(b)	<u>182</u> days
37 C.F.R. §1.702(c)	<u>0</u> days
37 C.F.R. §1.702(d)	<u>0</u> days
37 C.F.R. §1.702(e)	<u>0</u> days
Total 1.702 § (a)-(e):	<u>783</u> days

In summary, Applicants respectfully request that the Patent Term Adjustment

be increased from that reported on the Determination of Patent Term Adjustment under 35 USC § 154(b) to 783 days. Applicants additionally request any further patent term adjustment based on the issue date of the patent as recalculated by the U.S. Patent and Trademark Office, based on the notification.

The patent is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704.

Applicants note that the grant of the patent will necessarily be more than three years after the filing date. Applicants hereby preserve the right to timely request correction of the patent term adjustment, in accordance with 35 USC §154(b)(1)(B), to add the adjustments attributable to in 37 C.F.R. §1.705 (a)-(c) with those attributable to 37 C.F.R. §1.703 (a)-(f), if applicable after issuance. *Wyeth v. Dudas*; Case 1:07-cv-01492-JR (D.D.C. 2008).

In accordance with the facts stated above, Applicants respectfully request review of the determination of patent term adjustment under 35 USC § 154(b).

Respectfully submitted,

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